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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 OWEN LINO,
12 CDCR #J-45685,

13 Plaintiff,

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15 vs.
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17 J. KELLERMAN, et al.;

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19 Defendants.
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Civil No. 10cv0449 MMA (PCL)

ORDER:

**(1) GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR
RECONSIDERATION; AND**

**(2) GRANTING IN PART
PLAINTIFF'S MOTION FOR
EXTENSION OF TIME TO FILE A
FOURTH AMENDED COMPLAINT**

[ECF Nos. 26, 27]

22 On February 26, 2010, Owen Lino ("Plaintiff"), a state prisoner currently incarcerated
23 at Kern Valley State Prison, and proceeding pro se, submitted a civil action pursuant to 42
24 U.S.C. § 1983, along with a Motion to Proceed *In Forma Pauperis* ("IFP"). The Court granted
25 Plaintiff's Motion to Proceed IFP but simultaneously dismissed his Complaint for failing to state
26 a claim. See Apr. 21, 2010 Order at 4-5. Plaintiff filed his First Amended Complaint ("FAC")
27 on May 24, 2010.

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1 Subsequently, Plaintiff filed a “Motion for Leave to Amend/Supplement First Amended
2 Complaint,” Motion to Appoint Counsel, and a “Motion for Law Library Access and Copy of
3 Court Docket.” [ECF Nos. 5, 7, 8].

4 The Court denied Plaintiff’s Motion for Appointment of Counsel, granted in part and
5 denied in part Plaintiff’s Motion for Law Library Access and copy of Court Docket, and granted
6 Plaintiff leave to file a Second Amended Complaint. *See* July 12, 2010 Order at 3. Plaintiff
7 filed a Second Amended Complaint on August 16, 2010. Then Plaintiff filed a “Motion for
8 Leave to File Third Amended Complaint, Motion for Extension of Time to File Third Amended
9 Complaint and Motion for Order for the Clerk to send only my Declaration in my Second
10 Amended Complaint” [ECF No. 12].

11 The Court granted Plaintiff’s Motion, in part, and allowed Plaintiff an extension of time
12 to file his Third Amended Complaint. *See* Sept. 14, 2010 Order at 2. However, the Court denied
13 Plaintiff’s request for a copy of his “declaration” because it simply was not clear what document
14 he was referring to. *Id.* at 2.

15 On November 3, 2010, Plaintiff filed a “Motion for Reconsideration in the last Court’s
16 Order pertaining to Plaintiff’s extension of time to amend his Complaint” [ECF No. 17]. In this
17 Motion, Plaintiff requested one of two options in which he sought a Court order either: (1)
18 directing the Clerk of Court to send him a copy of his Second Amended Complaint and provide
19 an additional twenty five days to file his Third Amended Complaint; or (2) directing the Warden
20 of Kern Valley State Prison to turn over his legal property. The Court again granted Plaintiff
21 an extension of time to file his Third Amended Complaint and provided him with a copy of his
22 Second Amended Complaint. However, Plaintiff was cautioned that he must show good cause
23 for any future requests for extensions of time and the Court will not continue to provide him with
24 free photocopies of any future pleadings he chooses to file.

25 Plaintiff then filed his Third Amended Complaint (“TAC”) which is ninety (90) pages
26 long, named forty two (42) defendants and contained a different claim against a different
27 defendant on each page. Plaintiff also filed a “Motion for 3 Judge Court.”

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1 This Court denied Plaintiff's Motion for "3 Judge Court" and dismissed his Third
2 Amended Complaint for failing to comply with Rule 8 of the Federal Rules of Civil Procedure
3 and Local Rule 8.2. Plaintiff was granted leave to file a Fourth Amended Complaint.

4 Instead of filing a Fourth Amended Complaint, Plaintiff has filed a "Motion for Extension
5 of Time to File and a Request for Additional Count Sheets" and "Motion for Reconsideration"
6 of the Court's May 20, 2011 Order.

7 **I. Motion for Reconsideration**

8 Under Rule 60(b), a motion for "relief from judgment or order" may be filed within a
9 "reasonable time," but usually must be filed "not more than one year after the judgment, order,
10 or proceeding was entered or taken." FED.R.CIV.P. 60(b). Reconsideration under Rule 60 may
11 be granted in the case of: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly
12 discovered evidence; or (3) fraud; or if (4) the judgment is void; (5) the judgment has been
13 satisfied; or (6) for any other reason justifies relief. FED.R.CIV. P. 60(b).

14 In this Motion, Plaintiff claims that he needs additional pages that exceed the limits
15 placed by the Local Rules and the Court's Order was "unjust." Pl.'s Mot. at 1-4. Plaintiff also
16 argues that the Court was in error when his motion for a "3 Judge Court" was denied. Plaintiff
17 claims that due to prison overcrowding and his medical issues, he has adequately shown that he
18 requires a "3-Judge court to convene concerning my case because it fits the standards of the
19 ruling in *Plata v. Brown* recently decided by the United States Supreme Court." *Id.* at 5.

20 Here, while the Court will permit Plaintiff to exceed the number of pages permitted by
21 Local Rule 8.2, the Court's denies Plaintiff's Motion for Reconsideration of the Court's denial
22 of the 3-Judge Court as it is not required in this matter pursuant to 28 U.S.C. § 2284.

23 **III. Motion for Extension of Time to File Fourth Amended Complaint**

24 The Court sets forth the above lengthy procedural history in this case to demonstrate that
25 Plaintiff has been given adequate opportunities to file his pleadings. This matter is now more
26 than a year old and remains in the screening stage. Moreover, with each additional amended
27 pleading, Plaintiff has added an overly burdensome number of Defendants and claims. "Prolix,
28 confusing complaints such as the ones plaintiffs filed in this case impose unfair burdens on

litigants and judges.” *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996). Such complaints causes judges to “waste half a day in chambers preparing the ‘short and plain statement’ which Rule 8 obligated plaintiffs to submit.” *Id.* at 1180. The Court will grant Plaintiff an extension of time and will permit him to file a Fourth Amended Complaint not to exceed forty five (45) pages. Plaintiff must abide by Rule 8 and all of the previous Court Orders. Plaintiff is admonished that no further extensions of time will be granted absent *exceptional* circumstances.

III. Conclusion and Order

Good cause appearing, **IT IS HEREBY ORDERED** that:

1. Plaintiff’s Motion for Extension of Time and Motion for Reconsideration are **GRANTED** in part and **DENIED** in part [ECF Nos. 26, 27].

2. Plaintiff has forty five (45) days leave from the date this Order is “Filed” in which to file a Fourth Amended Complaint and it is not to exceed forty five (45) pages. Plaintiff’s Amended Complaint must be complete in itself without reference to the superseded pleading. *See* S.D. Cal. Civ. L. R. 15.1. Defendants not named and all claims not re-alleged in the Amended Complaint will be deemed to have been waived. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

IT IS SO ORDERED.

DATED: July 7, 2011



Hon. Michael M. Anello
United States District Judge